

SSB 6726 - S AMD 177

By Senators Keiser and Marr

ADOPTED 2/15/2010

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "NEW SECTION. **Sec. 1.** (1) No later than thirty days after the
5 effective date of this section, the office of financial management
6 shall establish a working group on language access services.

7 (2) The working group shall include members that have experience
8 and knowledge of language access services in Washington state,
9 including representatives of a statewide association representing
10 hospitals, community health centers and providers for underserved and
11 immigrant populations, statewide associations representing physicians,
12 other health care providers who serve medicaid patients, a statewide
13 labor union currently working with language access providers,
14 statewide professional interpreter associations, community-based
15 organizations that advocate for persons with limited English
16 proficiency, language access providers, brokers, and representatives
17 of the department of social and health services.

18 (3) A representative of the office of financial management shall
19 chair the working group, and the department shall provide staff to
20 support the working group's activities.

21 (4) The working group shall develop a plan to improve the
22 efficiency and effectiveness of language access services. The plan
23 shall describe the best possible means by which the following criteria
24 are achieved: Administrative and overhead costs, including brokers
25 and language access agencies, are reduced; timeliness and flexibility
26 for medical providers is improved; the pool of qualified interpreters
27 is stabilized; and fraud and abuse are prevented.

1 (5) The office of financial management shall report the findings
2 of the working group to the legislature no later than September 30,
3 2010.

4
5 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.56 RCW
6 to read as follows:

7 (1) In addition to the entities listed in RCW 41.56.020, this
8 chapter applies to the governor with respect to language access
9 providers. Solely for the purposes of collective bargaining and as
10 expressly limited under subsections (2) and (3) of this section, the
11 governor is the public employer of language access providers who,
12 solely for the purposes of collective bargaining, are public
13 employees. The governor or the governor's designee shall represent
14 the public employer for bargaining purposes.

15 (2) There shall be collective bargaining, as defined in RCW
16 41.56.030, between the governor and language access providers, except
17 as follows:

18 (a) A statewide unit of all language access providers is the only
19 unit appropriate for purposes of collective bargaining under RCW
20 41.56.060;

21 (b) The exclusive bargaining representative of language access
22 providers in the unit specified in (a) of this subsection shall be the
23 representative chosen in an election conducted pursuant to RCW
24 41.56.070.

25 Bargaining authorization cards furnished as the showing of
26 interest in support of any representation petition or motion for
27 intervention filed under this section are exempt from disclosure under
28 chapter 42.56 RCW;

29 (c) Notwithstanding the definition of "collective bargaining" in
30 RCW 41.56.030(4), the scope of collective bargaining for language
31 access providers under this section is limited solely to: (i)
32 Economic compensation; (ii) rules and procedures regarding payments,
33 work rules, and reimbursements; (iii) certification procedures,
34 professional development, and training; (iv) labor-management

1 committees; and (v) grievance procedures. Retirement benefits are not
2 subject to collective bargaining. By such obligation neither party
3 may be compelled to agree to a proposal or be required to make a
4 concession unless otherwise provided in this chapter;

5 (d) In addition to the entities listed in the mediation and
6 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
7 41.56.480, the provisions apply to the governor or the governor's
8 designee and the exclusive bargaining representative of language
9 access providers, except that:

10 (i) In addition to the factors to be taken into consideration by
11 an interest arbitration panel under RCW 41.56.465, the panel shall
12 consider the financial ability of the state to pay for the
13 compensation and benefit provisions of a collective bargaining
14 agreement;

15 (ii) The decision of the arbitration panel is not binding on the
16 legislature and, if the legislature does not approve the request for
17 funds necessary to implement the compensation and benefit provisions
18 of the arbitrated collective bargaining agreement, the decision is not
19 binding on the state;

20 (e) Language access providers do not have the right to strike.

21 (3) Language access providers who are public employees solely for
22 the purposes of collective bargaining under subsection (1) of this
23 section are not, for that reason, employees of the state for any other
24 purpose. This section applies only to the governance of the
25 collective bargaining relationship between the employer and language
26 access providers as provided in subsections (1) and (2) of this
27 section.

28 (4) Each party with whom the department of social and health
29 services contracts for language access services and each of their
30 subcontractors shall provide to the department an accurate list of
31 language access providers, as defined in RCW 41.56.030, including
32 their names, addresses, and other contact information, annually by
33 January 30th, except that initially the lists must be provided within
34 thirty days of the effective date of this section. The department

1 shall, upon request, provide a list of all language access providers,
2 including their names, addresses, and other contact information, to a
3 labor union seeking to represent language access providers.

4 (5) This section does not create or modify:

5 (a) The department's obligation to comply with the federal statute
6 and regulations; and

7 (b) The legislature's right to make programmatic modifications to
8 the delivery of state services under chapter 74.04 RCW. The governor
9 may not enter into, extend, or renew any agreement under this chapter
10 that does not expressly reserve the legislative rights described in
11 this subsection.

12 (6) Upon meeting the requirements of subsection (7) of this
13 section, the governor must submit, as a part of the proposed biennial
14 or supplemental operating budget submitted to the legislature under
15 RCW 43.88.030, a request for funds necessary to implement the
16 compensation and benefit provisions of a collective bargaining
17 agreement entered into under this section or for legislation necessary
18 to implement the agreement.

19 (7) A request for funds necessary to implement the compensation
20 and benefit provisions of a collective bargaining agreement entered
21 into under this section may not be submitted by the governor to the
22 legislature unless the request has been:

23 (a) Submitted to the director of financial management by October
24 1st prior to the legislative session at which the requests are to be
25 considered, except that, for initial negotiations under this section,
26 the request may not be submitted before July 1, 2011; and

27 (b) Certified by the director of financial management as
28 financially feasible for the state or reflective of a binding decision
29 of an arbitration panel reached under subsection (2)(d) of this
30 section.

31 (8) The legislature must approve or reject the submission of the
32 request for funds as a whole. If the legislature rejects or fails to
33 act on the submission, any collective bargaining agreement must be

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1 reopened for the sole purpose of renegotiating the funds necessary to
2 implement the agreement.

3 (9) If, after the compensation and benefit provisions of an
4 agreement are approved by the legislature, a significant revenue
5 shortfall occurs resulting in reduced appropriations, as declared by
6 proclamation of the governor or by resolution of the legislature, both
7 parties shall immediately enter into collective bargaining for a
8 mutually agreed upon modification of the agreement.

9 (10) After the expiration date of any collective bargaining
10 agreement entered into under this section, all of the terms and
11 conditions specified in the agreement remain in effect until the
12 effective date of a subsequent agreement, not to exceed one year from
13 the expiration date stated in the agreement.

14 (11) In enacting this section, the legislature intends to provide
15 state action immunity under federal and state antitrust laws for the
16 joint activities of language access providers and their exclusive
17 bargaining representative to the extent the activities are authorized
18 by this chapter.

19

20 **Sec. 3.** RCW 41.56.030 and 2007 c 184 s 2 are each amended to read
21 as follows:

22 As used in this chapter:

23 (1) "Public employer" means any officer, board, commission,
24 council, or other person or body acting on behalf of any public body
25 governed by this chapter, or any subdivision of such public body. For
26 the purposes of this section, the public employer of district court or
27 superior court employees for wage-related matters is the respective
28 county legislative authority, or person or body acting on behalf of
29 the legislative authority, and the public employer for nonwage-related
30 matters is the judge or judge's designee of the respective district
31 court or superior court.

32 (2) "Public employee" means any employee of a public employer
33 except any person (a) elected by popular vote, or (b) appointed to
34 office pursuant to statute, ordinance or resolution for a specified

1 term of office as a member of a multimember board, commission, or
2 committee, whether appointed by the executive head or body of the
3 public employer, or (c) whose duties as deputy, administrative
4 assistant or secretary necessarily imply a confidential relationship
5 to (i) the executive head or body of the applicable bargaining unit,
6 or (ii) any person elected by popular vote, or (iii) any person
7 appointed to office pursuant to statute, ordinance or resolution for a
8 specified term of office as a member of a multimember board,
9 commission, or committee, whether appointed by the executive head or
10 body of the public employer, or (d) who is a court commissioner or a
11 court magistrate of superior court, district court, or a department of
12 a district court organized under chapter 3.46 RCW, or (e) who is a
13 personal assistant to a district court judge, superior court judge, or
14 court commissioner. For the purpose of (e) of this subsection, no
15 more than one assistant for each judge or commissioner may be excluded
16 from a bargaining unit.

17 (3) "Bargaining representative" means any lawful organization
18 which has as one of its primary purposes the representation of
19 employees in their employment relations with employers.

20 (4) "Collective bargaining" means the performance of the mutual
21 obligations of the public employer and the exclusive bargaining
22 representative to meet at reasonable times, to confer and negotiate in
23 good faith, and to execute a written agreement with respect to
24 grievance procedures and collective negotiations on personnel matters,
25 including wages, hours and working conditions, which may be peculiar
26 to an appropriate bargaining unit of such public employer, except that
27 by such obligation neither party shall be compelled to agree to a
28 proposal or be required to make a concession unless otherwise provided
29 in this chapter.

30 (5) "Commission" means the public employment relations commission.

31 (6) "Executive director" means the executive director of the
32 commission.

33 (7) "Uniformed personnel" means: (a) Law enforcement officers as
34 defined in RCW 41.26.030 employed by the governing body of any city or

1 town with a population of two thousand five hundred or more and law
2 enforcement officers employed by the governing body of any county with
3 a population of ten thousand or more; (b) correctional employees who
4 are uniformed and nonuniformed, commissioned and noncommissioned
5 security personnel employed in a jail as defined in RCW
6 70.48.020(~~(+5+)~~) (9), by a county with a population of seventy
7 thousand or more, and who are trained for and charged with the
8 responsibility of controlling and maintaining custody of inmates in
9 the jail and safeguarding inmates from other inmates; (c) general
10 authority Washington peace officers as defined in RCW 10.93.020
11 employed by a port district in a county with a population of one
12 million or more; (d) security forces established under RCW 43.52.520;
13 (e) firefighters as that term is defined in RCW 41.26.030; (f)
14 employees of a port district in a county with a population of one
15 million or more whose duties include crash fire rescue or other
16 firefighting duties; (g) employees of fire departments of public
17 employers who dispatch exclusively either fire or emergency medical
18 services, or both; or (h) employees in the several classes of advanced
19 life support technicians, as defined in RCW 18.71.200, who are
20 employed by a public employer.

21 (8) "Institution of higher education" means the University of
22 Washington, Washington State University, Central Washington
23 University, Eastern Washington University, Western Washington
24 University, The Evergreen State College, and the various state
25 community colleges.

26 (9) "Home care quality authority" means the authority under
27 chapter 74.39A RCW.

28 (10) "Individual provider" means an individual provider as defined
29 in RCW 74.39A.240(4) who, solely for the purposes of collective
30 bargaining, is a public employee as provided in RCW 74.39A.270.

31 (11) "Child care subsidy" means a payment from the state through a
32 child care subsidy program established pursuant to RCW 74.12.340 or
33 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
34 program.

1 (12) "Family child care provider" means a person who: (a)
2 Provides regularly scheduled care for a child or children in the home
3 of the provider or in the home of the child or children for periods of
4 less than twenty-four hours or, if necessary due to the nature of the
5 parent's work, for periods equal to or greater than twenty-four hours;
6 (b) receives child care subsidies; and (c) is either licensed by the
7 state under RCW 74.15.030 or is exempt from licensing under chapter
8 74.15 RCW.

9 (13) "Adult family home provider" means a provider as defined in
10 RCW 70.128.010 who receives payments from the medicaid and state-
11 funded long-term care programs.

12 (14)(a) "Language access provider" means any independent contractor
13 who provides spoken language interpreter services for department of
14 social and health services appointments or medicaid enrollee
15 appointments, or provided these services on or after January 1, 2009,
16 and before the effective date of this section, whether paid by a
17 broker, foreign language agency, or the department.

18 (b) "Language access provider" does not mean an owner, manager, or
19 employee of a broker or a language access agency.

20
21 **Sec. 4.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read
22 as follows:

23 (1) Upon the written authorization of an individual provider, a
24 family child care provider, ~~((or))~~ an adult family home provider, or a
25 language access provider within the bargaining unit and after the
26 certification or recognition of the bargaining unit's exclusive
27 bargaining representative, the state as payor, but not as the
28 employer, shall, subject to subsection (3) of this section, deduct
29 from the payments to an individual provider, a family child care
30 provider, ~~((or))~~ an adult family home provider, or a language access
31 provider the monthly amount of dues as certified by the secretary of
32 the exclusive bargaining representative and shall transmit the same to
33 the treasurer of the exclusive bargaining representative.

1 (2) If the governor and the exclusive bargaining representative of
2 a bargaining unit of individual providers, family child care
3 providers, ~~((or))~~ adult family home providers, or language access
4 providers enter into a collective bargaining agreement that:

5 (a) Includes a union security provision authorized in RCW
6 41.56.122, the state as payor, but not as the employer, shall, subject
7 to subsection (3) of this section, enforce the agreement by deducting
8 from the payments to bargaining unit members the dues required for
9 membership in the exclusive bargaining representative, or, for
10 nonmembers thereof, a fee equivalent to the dues; or

11 (b) Includes requirements for deductions of payments other than
12 the deduction under (a) of this subsection, the state, as payor, but
13 not as the employer, shall, subject to subsection (3) of this section,
14 make such deductions upon written authorization of the individual
15 provider, family child care provider, ~~((or))~~ adult family home
16 provider, or language access provider.

17 (3)(a) The initial additional costs to the state in making
18 deductions from the payments to individual providers, family child
19 care providers, ~~((and))~~ adult family home providers, and language
20 access providers under this section shall be negotiated, agreed upon
21 in advance, and reimbursed to the state by the exclusive bargaining
22 representative.

23 (b) The allocation of ongoing additional costs to the state in
24 making deductions from the payments to individual providers, family
25 child care providers, ~~((or))~~ adult family home providers, or language
26 access providers under this section shall be an appropriate subject of
27 collective bargaining between the exclusive bargaining representative
28 and the governor unless prohibited by another statute. If no
29 collective bargaining agreement containing a provision allocating the
30 ongoing additional cost is entered into between the exclusive
31 bargaining representative and the governor, or if the legislature does
32 not approve funding for the collective bargaining agreement as
33 provided in RCW 74.39A.300, 41.56.028, or 41.56.029, as applicable,
34 the ongoing additional costs to the state in making deductions from

1 the payments to individual providers, family child care providers,
2 ((~~or~~)) adult family home providers, or language access providers under
3 this section shall be negotiated, agreed upon in advance, and
4 reimbursed to the state by the exclusive bargaining representative.

5 (4) The governor and the exclusive bargaining representative of a
6 bargaining unit of family child care providers may not enter into a
7 collective bargaining agreement that contains a union security
8 provision unless the agreement contains a process, to be administered
9 by the exclusive bargaining representative of a bargaining unit of
10 family child care providers, for hardship dispensation for license-
11 exempt family child care providers who are also temporary assistance
12 for needy families recipients or WorkFirst participants.

13
14 **Sec. 5.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
15 as follows:

16 Individual providers, as defined in RCW 74.39A.240, and family
17 child care providers, (~~as defined in RCW 41.56.030, and~~) adult
18 family home providers, and language access providers, all as defined
19 in RCW 41.56.030, are not employees of the state or any of its
20 political subdivisions and are specifically and entirely excluded from
21 all provisions of this title, except as provided in RCW 74.39A.270,
22 41.56.028, and 41.56.029.

23
24 **Sec. 6.** RCW 43.01.047 and 2007 c 184 s 5 are each amended to read
25 as follows:

26 RCW 43.01.040 through 43.01.044 do not apply to individual
27 providers under RCW 74.39A.220 through 74.39A.300, family child care
28 providers under RCW 41.56.028, or adult family home providers under
29 RCW 41.56.029, or language access providers under section 3 of this
30 act.

31
32 **Sec. 7.** RCW 74.04.025 and 1998 c 245 s 143 are each amended to
33 read as follows:

1 (1) The department and the office of administrative hearings shall
2 ensure that bilingual services are provided to non-English speaking
3 applicants and recipients. The services shall be provided to the
4 extent necessary to assure that non-English speaking persons are not
5 denied, or unable to obtain or maintain, services or benefits because
6 of their inability to speak English.

7 (2) If the number of non-English speaking applicants or recipients
8 sharing the same language served by any community service office
9 client contact job classification equals or exceeds fifty percent of
10 the average caseload of a full-time position in such classification,
11 the department shall, through attrition, employ bilingual personnel to
12 serve such applicants or recipients.

13 (3) Regardless of the applicant or recipient caseload of any
14 community service office, each community service office shall ensure
15 that bilingual services required to supplement the community service
16 office staff are provided through contracts with (~~interpreters, local~~
17 ~~agencies, or other community resources~~) language access providers.

18 (4) The department shall certify, authorize, and qualify language
19 access providers in a manner consistent with any collective bargaining
20 agreement entered into pursuant to section 3 of this act as needed to
21 maintain a pool of certified, authorized, and qualified providers.

22 (5) Initial client contact materials shall inform clients in all
23 primary languages of the availability of interpretation services for
24 non-English speaking persons. Basic informational pamphlets shall be
25 translated into all primary languages.

26 ((+5)) (6) To the extent all written communications directed to
27 applicants or recipients are not in the primary language of the
28 applicant or recipient, the department and the office of
29 administrative hearings shall include with the written communication a
30 notice in all primary languages of applicants or recipients describing
31 the significance of the communication and specifically how the
32 applicants or recipients may receive assistance in understanding, and
33 responding to if necessary, the written communication. The department
34 shall assure that sufficient resources are available to assist

1 applicants and recipients in a timely fashion with understanding,
2 responding to, and complying with the requirements of all such written
3 communications.

4 ~~((6))~~ (7) As used in this section ~~((7))~~:

5 (a) "Language access provider" means any independent contractor
6 who provides spoken language interpreter services for department
7 appointments or medicaid enrollee appointments, or provided these
8 services on or after January 1, 2009, and before the effective date of
9 this section, whether paid by a broker, foreign language agency, or
10 the department. "Language access provider" does not mean an owner,
11 manager, or employee of a broker or a language access agency.

12 (b) "Primary languages" includes but is not limited to Spanish,
13 Vietnamese, Cambodian, Laotian, and Chinese.

14
15 NEW SECTION. Sec. 8. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19
20 NEW SECTION. Sec. 9. If any part of this act is found to be in
21 conflict with federal requirements that are a prescribed condition to
22 the allocation of federal funds to the state, the conflicting part of
23 this act is inoperative solely to the extent of the conflict and with
24 respect to the agencies directly affected, and this finding does not
25 affect the operation of the remainder of this act in its application
26 to the agencies concerned. Rules adopted under this act must meet
27 federal requirements that are a necessary condition to the receipt of
28 federal funds by the state."

29 ADOPTED 2/15/2010

30 Renumber the sections consecutively and correct any internal
31 references accordingly.

32
33 **SSB 6726 - S AMD 177**

34 By Senators Keiser and Marr

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2 On page 1, line 2 of the title, after "providers;" strike the
3 remainder of the title and insert "amending RCW 41.56.030, 41.56.113,
4 41.04.810, 43.01.047, and 74.04.025; adding a new section to chapter
5 41.56 RCW; and creating new sections."

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